provisions in section 62 on which the article derived its authority. The express provisions I am referring to are subsections (3)(b), (4)(f) and (7). For the same reasons, article 27 of the order is also invalid because it contradicts and is inconsistent with section 62(7). In fact article 27 provides for a punishment in excess of that provided in section 62(7). In such a situation the courts can declare the articles i.e., 13(A)(1) and (2), and 27, void.

There is nothing in section 23(b) of the Interpretation and General Clauses Ordinance, 1948, which derogates from anything I have just said. Section 23(b) is as follows:

"23. When an Act of Parliament or Enactment confers power on any authority to make subsidiary legislation, the following provisions shall, *unless the contrary intention appears,* (my emphasis) have effect with reference to the making and operation of such subsidiary legislation...

(b) there may be annexed to the breach of any subsidiary legislation such penalty not exceeding one thousand dollars, or such term of imprisonment of either description not exceeding six months, or both, as the authority making the subsidiary legislation may think fit;"

Section 62(7) is clear beyond a peradventure that any contravention of an order made under section 62 shall be punished under the subsection. There could be no other punishment or penalty, otherwise, section 62(7) would be otiose.

It is therefore illegal for the Municipality of Ipoh to collect the excess charge/surcharge under the invalid articles 13A(1) and (2). Those who have paid such excess charge/surcharge are entitled to ask for a refund.

Articles 13A(3) and 24 of the order are also *ultra vires*. Section 62(3)(b) and (4)(f) only empowered the appropriate authority to levy charges in respect of the use of a parking space and the manner of its collection. These words cannot be taken to mean that the said authority have the power to alter existing law by creating a presumption that the registered owner of a motor vehicle is deemed to be, in article 13A(3), the person in charge of a motor vehicle, and in article 24, the person liable if the actual driver is not traced. There is here a complete *non sequitur*. I cannot do better than echo the words of Lord Atkin in *Liversidge* v. *Anderson.*[2] "I know of only one authority which might justify this method of construction":— "But 'glory' doesnt' mean 'a nice knock-down argument.'" Alice objected. "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean — neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master — that's all." (Through the Looking Glass, ch. vi). The Municipality of Ipoh are not to be masters. Articles 13A(3) and 24 are clear examples of exceeding the authority granted in the parent Act, in the instant case, section 62(3)(b) and (4)(f) of the Road Traffic Ordinance, 1958 and the courts will not hesitate to strike down any subordinate legislation which is *ultra vires*: *In re Grosvenor Hotel, London (No. 2).*[3] "It follows, therefore, that R.S.C., O.24, r.15, if and in so far as it purports to alter the law, is *ultra vires.*" *per* Salmon L.J., at page 1262. And at page 1243, *per* Lord Denning M.R., "What then are the powers of the Rule Committee? they can make rules for regulating and prescribing the procedure and practice of the court, but they cannot alter the rules of evidence, or the ordinary law of the land." Borrowing the words of Salmon L.J., it follows, therefore, that articles 13A(3) and 24, in so far as it purports to alter the law is *ultra vires.*

In the result, I would therefore quash the conviction and set aside the sentence and I order that the fine and surcharge which have been paid by the defendant to be refunded to her.

Perhaps at this juncture, a few words of advice may not be inappropriate. The Municipality of Ipoh can still deal with infringements of articles 7, 9 and 10 of the order. The proper thing to do is for offenders to be prosecuted under section 62(7) or to have the offence compounded under the amended section 147 of the Road Traffic Ordinance, 1958.

Conviction quashed; sentence set aside.

RE APPLICATION BY DUNLOP ESTATES BHD. DUNLOP ESTATES BHD. v. ALL MALAYAN ESTATES STAFF UNION

[O.C.J. (Mohamed Azmi J.) May 22, 1979]
[Kuala Lumpur — Originating Motion No. 59 of 1978]

Industrial Law — Appointment — Grading on recruitment — Hospital Assistant recruited as Grade I Hospital Assistant — Paid salary of Grade II Hospital Assistant — Whether award of Industrial Court can relate back to date of recruitment even though more than six months before date of reference — Time-frame and non-time frame awards — Industrial Relations Act, 1967, s. 30(7).

Administrative Law — Application for certiorari to quash award of Industrial Court — Appointment — Grading or recruitment — Whether award of Industrial Court can relate back to date of recruitment even though more than six months before date of reference — Industrial Relations Act, 1967, s. 30(7).

Interpretation of statutes — Liberal interpretation — Intention of legislature — Purpose of legislation.

In this case the Industrial Court in its award had stated that the employee was recruited as a Grade I Hospital Assistant and therefore shall be paid the salary of the grade from October 1, 1970 when he was recruited. In the application for *certiorari,* the applicants agreed that the employee should be employed in Grade I and it was argued that order of the Industrial Court could not under section 30(7) of the Industrial Relations Act, 1967, be made retrospective earlier than six months from November 8, 1976, the date on which the dispute was referred to the court by the Minister.

Held: (1) section 30(7) of the Industrial Relations Act, 1967, does not apply in this case having regard to the nature of the award. Since the Industrial Court has correctly decided that the employee was in fact employed and did in fact perform the duties of Grade I Hospital Assistant from the date of his recruitment, the court has no alternative but to order that he should be paid the salary and allowance of Grade I Hospital Assistant from that date. From the very nature of the award, the question of restrospectivity did not arise in this case, and as such the provision of section 30(7) did not apply and the Industrial Court had not acted in excess of jurisdiction by making the payment effective from October 1, 1970, which was the date of the employee's recruitment;

(2) the scope of sections 30(7) of the Act must be given a liberal interpretation having regard to the object of the Industrial Relations Act. All non-time-frame awards must of necessity be exempted from the entire provision of section 30(7) unless they create mischief and lead to absurdity and inconsistency with the other provisions of the Act.

Cases referred to:-

(1) *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* v. *South East Asia Fire Bricks Sdn. Bhd.* [1976] 2 M.L.J. 67, 68.

(2) *M/S Hindustan Hosiery Industries* v. *F.H. Lala & Anor.* [1974] 1 L.L.J. 340.

(3) *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 All E.R. 155, 164.

(4) *Norman* v. *Norman* [1950] 1 All E.R. 1082, 1084.

(5) *R.* v. *Preston Supplementary Benefits Appeal Tribunal, ex parte Moore* [1975] 2 All E.R. 807.

(6) *R.* v. *Industrial Injuries Commissioner, ex parte Amalgamated Engineering Union* [1966] 1 All E.R. 97, 101.

(7) *Brutus* v. *Cozens* [1972] 2 All E.R. 1297, 1302.

The following authorities were also referred to in argument: *Chartered Bank, Kuching* v. *Kuching Bank Employees' Union* [1966] 2 M.L.J. xliv; *P.H. Kalyani* v. *M/S Air France, Calcultta* A.I.R. 1963 S.C. 1756; *R. Balasubramaniam* v. *Carborundum Universal Ltd.* [1977] Labour I.C. 826 at p. 827; *Malayawata Steel Bhd.* v. *Union of Malayawata Steel Workers* [1978] 1 M.L.J. 87.

ORIGINATING MOTION.

A.T.C. Saw for the applicants.

D.P. Xavier for the respondents.

Cur. Adv. Vult.

Mohamed Azmi J.: This is an application by notice of originating motion for an order of *certiorari* to remove to this court for the purpose of its being quashed the Award No. 26/78 handed down on March 10, 1978 by the Industrial Court in Case No. 228/76. The dispute before the Industrial Court is over the claim of Mr. Soon Siak Fooi, a Hospital Assistant employed by Dunlop Estates Berhad (the applicants), with effect from October 1, 1970. It is the contention of the respondent union, of which Mr. Soon is a member, that although Mr. Soon, the claimant, has been recruited as a Grade I Hospital Assistant and has been performing the duties of a Hospital Assistant of that grade, he is not paid the salary of a Grade I officer as provided by the 1971 MAPA/AMESU Collective Agreement. In short, although appointed as a Grade I Hospital Assistant, he was paid a salary equivalent to Grade II Hospital Assistant. However, Dunlop Estates Berhad, the applicants, maintained that Mr. Soon has been recruited as a Grade II Hospital Assistant, and therefore, is not entitled to a Grade I salary and allowance. It is not seriously disputed that Mr. Soon first took up the matter of grading with the applicants on April 27, 1974. As there was no response, his union, the present respondents, took up the matter with the applicants on May 20, 1976. Eventually, the dispute was referred to the Industrial Court by the Minister of Labour and Manpower under section 26(2) of the Industrial Relations Act, 1967 on November 8, 1976. By its award handed down on March 10, 1978, the Industrial Court found on the evidence that Mr. Soon was in effect employed as a Grade I Hospital Assistant from the date of his recruitment (i.e. October 1, 1970), and ordered the applicants to pay him the difference between what he should have been paid and what he actually received since October 1, 1970, in basic salary and other allowances, if any.

Before me, the issue has somewhat been narrowed down substantially. The order of the Industrial Court which the applicants wish to quash is only that part which made the order retrospective more than six months from November 8, 1976 on the ground that it is contrary to the provision of section 30(7) of the Industrial Relations Act, 1967. It is argued that there is an error of law on the face of the record as far as this part of the order is concerned, and, further, it is in excess of jurisdiction. It is common ground that the High Court has power to quash part of the Industrial Court Order if that part can be severed. In the present case, there are two limbs to the order and they are severable from one another. If the invalid part of an order is distinct and severable from the remainder, *certiorari* may issue to quash that part only. Before me, the applicants accept the order of the Industrial Court that Mr. Soon should be emplaced in Grade I and be paid the salary of an officer of that grade, but the order should not be made retrospective from October 1, 1970 when Mr. Soon was first recruited. According to them, it should be effective either from May 8, 1976, i.e. six months from date of reference to court by reason of section 30(7), or May 20, 1976, i.e. the date when the union first took up the matter by virtue of section 30(5). By the proviso to section 30(7), the retrospective date of the award should not be made earlier than six months from November 8, 1976, i.e. the date on which the dispute was referred to the court by the Minister.

Section 30(7) provides:

"An award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award:

Provided that the retrospective date of the award may not, except in the case of a decision of the court under section 33 or an order of the court under section 56(2)(c) or a decision of the court on a reference to it under section 20(3), be earlier than six months from the date on which the dispute was referred to the court."

On the interpretation of the above provision, it is argued on behalf of the applicants that there are only three exceptions to the proviso. Apart from these three exceptions, the Industrial Court has no power to make an order retrospective more than six months from the date of reference. The exceptions are in respect of (1) any decision of Industrial Court under section 33 where any question arises as to the interpretation of any award or collective agreement; (2) an order of the court under section 56(2)(c) pertaining to non-compliance with award or collective agreement; and (3) any decision of the court on reference to it under section 20(3) in respect of the dismissal of an individual workman who is not a member of a trade union. It is the contention of the applicants that Mr. Soon's case does not come within any of the three exceptions, and, as such, by making the order retrospective from October 1, 1970, there is an error of law on the face of the records.

The question for determination in this case is whether section 30(7) is applicable. If applicable, then it is clear that the applicants must succeed as there is an error of law on the face of the record, and the Industrial Court has acted in excess of jurisdiction by making the order effective from October 1, 1970 instead of limiting it to a period of six months from November 8, 1976.

The object of the Industrial Relations Act and

the extent of the jurisdiction of the High Court to issue orders of *certiorari* have been expounded by the Federal Court in *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* v. *South East Asia Fire Bricks Sdn. Bhd.*[1] At page 68, Raja Azlan Shah F.J. (as he then was) has this to say:

"... Proceedings by way of certiorari with regard to industrial disputes are not as of right otherwise they may materially affect the fundamental basis of the decision of the Industrial Court under the Industrial Relations Act, 1967, namely, quicker solution to industrial dispute to achieve industrial peace. The Act is intended to be a self-contained one. It seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given in circumstances peculiar to each dispute and the Industrial Court is to a large extent free from the restrictions and technical considerations imposed on ordinary courts. The jurisdiction of the High Court to issue orders of certiorari is neither an appellate nor a revisional jurisdiction. Also from the very nature of the power conferred under section 25 of the courts of Judicature Act, 1964, it is clear that in exercise of this power the High Court exercised original jurisdiction. This jurisdiction stems from the prerogative jurisdiction inherited from the United Kingdom courts and its object is mainly to enable the superior courts to keep inferior tribunals within the bounds of their authority. The supervisionary character is essential for always in the background there is the beguiling illusion that an inferior tribunal entrusted to hand down awards of a final nature may hand down awards as it likes. Therefore the jurisdiction may for convenience be described as an extraordinary original jurisdiction. The circumstances under which the High Court can interfere with the decision of the Industrial Court are limited. For instance, it has no jurisdiction under section 25 of the Courts of Judicature Act to interfere with the findings of fact reached by the Industrial Court on the ground that the decision is erroneous except where there is a clear error of law on the face of the record. It cannot arrogate the powers of the Court of Appeal by substituting its own judgment for that of the Industrial Court on questions of fact and cannot review the evidence."

The same principle has been enunciated by the Supreme Court of India in *M/s. Hindustan Hosiery Industries* v. *F.H. Lala & Anor.*[2] where it was held an Industrial Disputes Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration.

On the facts, it is my considered opinion that section 30(7) does not apply in the present case having regard to the nature of the award. The first part of the award held that Mr. Soon was recruited on October 1, 1970 as a Hospital Assistant Grade I and not Grade II. This part of the award has not been challenged in this application. Indeed, it cannot be challenged, as it is based on a finding of facts, and this court should refuse to review the evidence unless the conclusion is so unreasonable and is totally unsupportable by any evidence which in effect amounts to an error of law on the face of the record. There is accordingly no longer any dispute as to the date of Mr. Soon's recruitment as a Grade I Hospital Assistant. That being the case, can it be said that October 1, 1970 is a date chosen by the Industrial Court in the exercise of its discretion? I do not think so. It is the agreed date of recruitment of Mr. Soon. The dispute before the Industrial Court is on the question of grading on recruitment, and not on promotion. The award does not order the date of Mr. Soon's recruitment be made retrospective. To my mind, the second part of the award, which is being challenged, is merely a consequential order. Since the Industrial Court has correctly decided that Mr. Soon was in fact employed and did in fact perform the duties of a Grade I Hospital Assistant from the date of his recruitment, I think the court has no alternative but to order that he should be paid the salary and allowance of Grade I Hospital Assistant from that date. Any other order would be absurd, unjust and against the principle of fair dealings between employers and workers. The date Mr. Soon first came to realize the error in his grading, or the date the respondent union first took up the matter with the applicants are irrelevant. It cannot be disputed that Mr. Soon has been underpaid from the date of his recruitment. The court award is to rectify a mistake on Mr. Soon's grading at the time of his recruitment. It is not a 'time-frame' award as in the case of promotion. In my view, from the very nature of the award, the question of retrospectivity does not arise in the present case, and, as such, the provision of section 30(7) does not apply, and the Industrial Court has not acted in excess of jurisdiction by making the payment order effective from October 1, 1970, which is the date of Mr. Soon's recruitment.

On the law, the inapplicability of section 30(7) in the present case is supported by considering the scope and interpretation of that subsection. It is a well settled principle of construction that statutes should be construed as far as the words would permit to avoid absurdity or repugnancy or inconsistency with the rest of the statute, and it is the duty of the court as far as possible to give effect to the intention of the legislature. *Maxwell* on Interpretation of Statutes, Twelfth Edition, on page 228 has this to say:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: 'the canons of construction are not so rigid as to prevent a realistic solution'."

As stated by Denning L.J. in *Seaford Court Estates, Ltd.* v. *Asher*[3]:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy,

and then he must supplement the written word so as to give 'force of life' to the intention of the legislature...."

This principle is adopted in *Norman* v. *Norman*.[4] Further, in *R.* v. *Preston Supplementary Benefits Appeal Tribunal, ex parte Moore*,[5] the principles on which the court should interfere was laid down by Lord Denning M.R. In that case, his Lordship has this to say:

"It is plain that Parliament intended that the Supplementary Benefit Act 1966 should be administered with as little technicality as possible. It should not become the happy hunting-ground for lawyers. The courts should hesitate long before interfering by *certiorari* with the decisions of the appeal tribunals. Otherwise the courts would become engulfed with streams of cases just as they did under the National Insurance (Industrial Injuries) Act 1965: see *R.* v. *Industrial Injuries Commissioner, ex parte Amalgamated Engineering Union*.[6] The courts should not enter into a meticulous discussion of the meaning of this or that word in the Act. They should leave the tribunals to interpret the Act in a broad reasonable way, according to the spirit and not to the letter, especially as Parliament has given them a way of alleviating any hardship. The court should only interfere when the decision of the tribunal is unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision: see *Brutus* v. *Cozens*."[7]

In my view, having regard to the principles enunciated in the cases cited, the Industrial Relations Act, being a social legislation enacted with the prime object of attaining social justice and industrial peace, demands practical and realistic interpretation whenever necessary, for the purpose of maintaining good relationship and fair dealings between employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship. Although the word "award" has been defined by section 2 of the Act, I am inclined to the view that for the purpose of section 30(7), a distinction should be made between a 'time-frame' award and a 'non-time-frame' award. In a non-time-frame award involving orders like reinstatement or grading on first appointment — as in the present case — I do not think that the subsection should apply. To interpret otherwise, would, in my view, lead to absurdity and inconsistency which the legislature could never have intended. As an example, one can take the case of dismissal. Under section 20, a workman who is not a member of a trade union and who has been dismissed without just cause or excuse, can be reinstated; and by virtue of the exception to the proviso to section 30(7), the order for reinstatement can be made retrospective from the date of his dismissal even though such date is more than six months from the date on which the dispute was referred to the court. Whereas a union member, who is similarly dismissed and whose case is referred by the Minister to the court under section 26, cannot have his order of reinstatement made retrospective more than six months from the date of reference by virtue of the proviso to that subsection. It seems to me to be extremely absurd that a union member should be placed in a less favourable position than a non-union member; and a union member can only be reinstated six months from date of reference and not from date of wrongful dismissal. Similarly, Mr. Soon in the present case has been proven to be underpaid from October 1, 1970, but the error cannot be rectified from that date. In my opinion, that absurd and inconsistent situation cannot possibly be intended by the legislature. Yet, that would be the result if section 30(7) is to be given the strict interpretation as suggested by the applicants. Further, I am of the view that there is a lacuna in the proviso. The draftsman of the Act has only made three exceptions to the proviso when it is clear that there are other situations, as in the present case, which, if known to the legislature, would also have been exempted from the six months limitation. As quoted elsewhere in this judgment, "the canons of construction are not so rigid as to prevent a realistic solution". In the present case, it would be absurd for Mr. Soon to be paid Grade I salary only from November 8, 1976 although it is not challenged that he has been recruited as a Grade I Hospital Assistant with effect from October 1, 1970. The question is: must the judge simply fold his hands and blame the draftsman? Denning L.J. in *Seaford Court Estates, Ltd.* v. *Asher*[3] has already provided the answer. The scope of section 30(7) including the proviso must, I think, be given liberal interpretation having regard to the object of the Industrial Relations Act. All non-time-frame award must of necessity be exempted from the entire provision of section 30(7) unless they create mischief and lead to absurdity and inconsistency with the other provisions in the Act. That must be the intention of the legislature.

In the present case, it would not be right for this court to quash or vary that part of the award which requires the applicants to pay Mr. Soon the salary of a Grade I Hospital Assistant with effect from October 1, 1970 on the technical ground that the proviso to section 30(7) only allows six months retrospectivity. Since the Industrial Court in its award has correctly decided that Mr. Soon was in fact employed and did, in fact, perform duties of a Grade I Hospital Assistant from the date of his recruitment, it is fair and equitable that he should be paid the proper salary of a Grade I Hospital Assistant from that date. As stated earlier on, Mr. Soon has been underpaid from the date of his employment and, as such, justice demands that the defect should be rectified from that date. In this sense, the award of the Industrial Court is not a time-frame award. Further, for reasons already stated, the question of retrospectivity does not really arise having regard to the nature of the award, and, as such, I am of the view that section 30(7) does not apply in this case, and the six months limitation imposed by the proviso is also inapplicable. It is now common ground that Mr. Soon was employed as a Grade I Hospital Assistant since October 1, 1970. As such, it is consistent with the spirit and object of the Industrial Relations Act that the applicants should pay to him the total difference between what he has received in the form of salaries and allowances and what he ought to have been paid from that date as a Grade I Hospital Assistant.

This application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Ng Yook Woon, Andrew T.C. Saw & Zahardin; Xavier & Vadiveloo.*